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ACTION MEMORANDUM FOR THE ASSISTANT ADMINISTRATOR FOR AFRICA

FROM: AFR/EA, Glenn Slocum

Glenn Slocum

SUBJECT: USAID Funding for an International Tribunal for Rwanda

Issue: Your approval is requested for a Memorandum of Understanding between USAID and the Department of State allocating \$900,000 in FY 1995 Economic Support Funds (ESF) to support the establishment of an International Tribunal for Rwanda.

Discussion: The Security Council voted overwhelmingly in November 1994 to establish the International Tribunal for the prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighboring States between 1 January 1994 and 31 December 1994 (referred to as the "International Tribunal for Rwanda"). TAB B is a copy of the Resolution. The U.S. took the lead at the UN in promoting the establishment of the Tribunal, arguing that the international community must act quickly to avoid another cycle of revenge killings.

Support for this Tribunal is an essential element in USAID's strategy to help establish credible national and international systems for identifying, apprehending, trying and punishing those guilty of human-rights crimes. Under this project, USAID will allocate \$500,000 of FY 95 ESF, New Obligor Authority (NOA), and \$400,000 of Section 517 ESF to the Department of State in the form of a Treasury Department Non-Expenditure Transfer. State will, in turn, make a contribution to the UN. These funds, along with an additional \$500,000 from the International Organizations and Programs (IO&P) account, will be used to provide technical assistance and commodities to the Tribunal. Other donors are expected to follow the U.S. lead in providing support to the UN for this activity.

FAA section 660 prohibits assistance for police, prisons, or law enforcement forces for any foreign government or any program of internal intelligence or surveillance on behalf of any foreign

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government. The International Tribunal includes a prosecutors component, and the description of the prosecutors' authorities contained in the Security Council resolution is too general to determine whether these prosecutors would be considered to be "law enforcement forces" within the meaning of the FAA section 660 (have authority to arrest, carry weapons, interrogate in private, etc.). However, even if these prosecutors were considered to be "law enforcement forces", section 660 would not prohibit this assistance, since it applies to "law enforcement forces for a foreign government". The International Tribunal is not a "foreign government", since it is an entity established by and under the auspices of the United Nations, not a national government. Additionally, the legislative history for a related statute indicates Congressional support for the prosecutorial component of international war crimes tribunals established by the Security Council. Specifically, the conference report for section 575 of the FY 95 Foreign Assistance Appropriations Act (authorizing the drawdown of commodities and services for such tribunals) refers to a potential Rwanda tribunal and states that "It is the intent of the conferees that a substantial portion of these funds be used for training and other assistance for prosecutors."

Congressional Notification is required. The attached CN (TAB C) expired on February 22, 1995.

Authority: FAA Section 632(a) provides authority for allocations of the type proposed. Approval of such arrangements, and execution of necessary documents, are considered within the authorities delegated to the AA/AFR by DOA 400 and DOA 402.

Recommendation: That you sign the MOU at TAB A. By signing this agreement you also authorize the use of these funds for this purpose.

Attachments: a/s

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drafted: AFR/EA: RGold 1/6/95 rwanda/itract.mem

cleared: AFR/DP: JGovan (draft) 1/10/95

GC/AFR: DLuten (draft) 2/6/95

DAA/AFR: CPeasley CH Date 5/1

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